

# Statement of Practice on penalties for incorrect returns

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## 1. **Introduction**

If any person submits an income tax return which is materially incorrect or incomplete, penalties can be charged under the Income Tax (Guernsey) Law 1975, as amended (“the Income Tax Law”).

There are two sections of the Income Tax Law that deal with incorrect tax returns:

- section 191 deals with penalties where the incorrect or incomplete return was submitted due to *negligence*; and
- section 192 deals with *fraud*.

See **Appendix 1**.

A penalty may be charged in addition to the tax and any late payment surcharge.

**Important** : see **14** below, however, for details of the option available to the Director, to request a prosecution.

This Statement of Practice describes the procedures we follow in determining the amount of a penalty to be charged in all cases where a prosecution is not taking place. It is governed by section 204 of the Income Tax Law.

As with all Statements of Practice now issued by the Director, the contents have been, and any changes to the contents will be, discussed with the Statement of Practice Working Party (which consists of representatives from the Income Tax Office and the Taxation Sub-Committee of the Guernsey Society of Chartered & Certified Accountants) and are approved by the Treasury & Resources Department before the Statement is published/ revised.

## 2. **If I have made an incorrect or incomplete return, what happens first?**

Once we are in a position to issue an additional assessment, as a result of the incorrect return(s), we will be able to set out:

- what errors or omissions have been discovered and, in cases where we have had to estimate the extent of the errors or omissions, the basis we have used to arrive at the estimated figures;
- the additional amount of tax that is owed;
- your right of appeal against the assessment;
- the extent to which late payment surcharges may be due; and
- whether we believe that the errors or omissions from the returns may give rise to a penalty

This may be done either in writing or during a meeting (if it is done at a meeting, a copy of the notes made following the meeting will be sent to you with a request that you confirm their accuracy).

### 3. **What happens next?**

Following the expiry of the thirty day appeal period, relating to the additional assessment, if you have not appealed against the assessment, the investigating officer will write to you:

- giving a summary of the additional assessments issued as a result of an incorrect return;
- setting out the fact that the thirty day appeal period, relating to the additional assessment, has expired without an appeal being lodged, and therefore the matter of the incorrect return now has to be considered;
- providing the investigating officer's consideration as to whether a penalty is chargeable for *negligence* (section 191) or *fraud* (section 192);
- enclosing a copy of this Statement of Practice detailing the maximum penalty which may be imposed, and also explaining that the Director will apply a system of "discounting";
- you will then be invited to let us have your comments if you consider that the liability to a penalty has been misstated or misunderstood.

### 4. **What is the next stage?**

Once the position has been explained, as set out above, and any comments received, the officer who has conducted the enquiries will prepare a calculation of the amount of the penalty that, in their view, should be imposed.

That calculation will then be passed to the Director or the Deputy Director, who will determine whether penalties should continue to be considered and, if so, arrangements will be made to set a time and date for the hearing.

Once the investigating officer has received confirmation that penalties should continue to be considered, they will send a letter to you setting out the factors which have been taken into account and the discounts which they will be proposing to the Director or the Deputy Director for their consideration at the penalty hearing.

### 5. **How are the penalties charged?**

Section 200 of the Income Tax Law authorises the Director or the Deputy Director to impose a penalty (see **Appendix 2**).

Before doing so, you will be told, in writing, why it is believed that you are liable to a penalty.

The same letter will explain the time and date that the matter will be dealt with; you will be invited to attend to make representations, if you wish.

The meeting will take place in the Income Tax Office, on the time and date set out in the letter.

If there is good reason why you cannot attend that meeting, but would like to do so, an adjournment will normally be given to another date.

**There is no obligation on you to attend the hearing at the Income Tax Office, if you do not wish to do so.**

If you choose not to attend the hearing, you may still put forward any representations you would like to be taken into account, in writing.

6. **What happens at the hearing?**

If you do not attend the hearing and have made no representations in writing then, normally, the penalty would be charged in the amount already considered appropriate (see 4 above).

If, however, you make representations in writing then, before imposing a penalty, those comments would be taken into account and any adjustments considered appropriate would be made.

If you attend the hearing, it will be explained to you, once again, under which section of the Income Tax Law the penalty is considered to arise (i.e. whether it is viewed as a penalty for *negligence* or *fraud*).

You will also be advised of the maximum amount of the penalty that can be charged under the Income Tax Law.

You will be given a reasonable opportunity of stating your case. Once again, anything you say will be considered before the final amount of the penalty is decided.

You will be advised of the amount of any penalty to be imposed. You may be handed the Penalty Order during the hearing, although it is more usual for it to be issued, by post, after the hearing.

It will then be explained to you how the penalty to be charged has been calculated (see 7 below).

Finally, your rights of appeal will be explained.

## 7. How do you work out the penalties?

The maximum penalties for *negligence* and *fraud* are different (see **Appendix 1**).

- For *negligence*, the maximum penalty is three times the tax which arises from the errors or omissions. For example, if the total additional tax is £1,000 the maximum statutory penalty for *negligence* is £3,000.
- For *fraud*, however, the penalties are three times the tax on the person's full income without any reduction for allowances. This is best illustrated by way of an example:

Mr X *fraudulently* delivers an incorrect income tax return. Following enquiries it is established that he omitted income of £10,000 from his return on which the tax is £2,000. Mr X is married and claims mortgage interest relief of £1,000.

His income for the year is £50,000 (disclosed on the return) plus the £10,000 which was omitted, a total of £60,000.

The maximum penalty for *fraud* would be calculated as follows:

Total income	£60,000	
Less allowances	nil	(as explained above)
Less mortgage interest	– £ 1,000	
Penalty therefore	£59,000	@ 20% (£11,800) x 3 = <u>£35,400</u>

**In addition, late payment surcharges may be payable.**

In practice, in the majority of cases, the penalty will be calculated on the basis of *negligence*, not *fraud*.

(Only in cases where there has been serious fraud will the penalty be calculated under section 192 – see **14** below for details of the option available to the Director to request prosecution and some examples of what may be considered as constituting serious *fraud*.)

In practice, the Director uses, as his starting point, 150% of the amount of the tax (rather than the maximum statutory penalty of 300%). From that starting point, the Director would then calculate the penalty which, in his opinion, should be charged by giving discounts depending on:

- whether, and when during the enquiry, the errors and omissions are disclosed;
- how well you co-operated over the whole period of our enquiries; and
- the size of the omissions and the gravity (or seriousness) of what was done.

- Disclosure

If all of the errors and omissions are disclosed in full immediately, as soon as we commence our enquiries, then a discount of 30% will be given for disclosure.

If you denied until the last possible moment that anything is wrong, however, you will receive little or no reduction for disclosure.

Practical experience suggests that most cases will be resolved somewhere between these two extremes. In determining what discount to give for disclosure we will consider how much information was given, how quickly and how that contributed towards settling the enquiries.

- Co-operation

A discount of up to 40% can be given.

If information is supplied promptly and if you attended meetings when asked to do so, answered questions fully and accurately, and supplied all the relevant facts to bring the enquiry to an early closure, then a substantial discount for co-operation may be given. In addition, if you made payments on account of any tax due once errors or omissions came to light then this will enhance the discount that may be given for co-operation.

If, however, you prevaricated in providing information, or gave misleading answers to questions asked, or if you failed to provide the information and we had to use our formal powers to obtain it, or if you generally obstructed our enquiries, you may not receive any discount for co-operation at all.

Once again, however, between these two extremes there is a wide range of possible variations which can arise.

- Size and gravity

The maximum reduction is 40%.

In relation to the size of the errors or omissions, we take account not only of the amount involved in real terms (that is, evading tax of £100,000 is clearly more serious than evading tax of £1,000) but we will also take account of how much of your total income consisted of omissions. For example, if you omit 5% of your total income this will be treated as less serious than if you omitted, say, 65% of your total income.

In relation to gravity, we will assess whether the errors or omissions amounted to a premeditated and well organised system of evasion or whether it was something less serious. We will take into account what was done, how it was done and how long it went on for.

The less serious size and gravity is considered to be, the larger the discount that will be given.

The penalty which may be imposed following the expiration of The Income Tax Irregularities Scheme (“ITIS”)

**What was ITIS?**

ITIS was a disclosure opportunity which was offered to all taxpayers for a limited period (between 13 December 2010 and 31 March 2011) by the Director of Income Tax, allowing any person who had omitted income, or who had other tax irregularities, to make a disclosure without penalties being imposed or having the matter referred for prosecution.

As detailed above, the registration period for making a disclosure under ITIS expired on 31 March 2011. Following the expiration of this registration period, any enquiries made by the Director which establish that a return is incomplete or incorrect for any year prior to the calendar year 2011 (where the Director chooses to impose penalties for either negligence or fraud) will ordinarily carry a minimum penalty of 100%. For the avoidance of doubt, this minimum penalty would apply in any case where it is established that there has been an irregularity in relation to any year prior to the calendar year 2011. The application of this minimum penalty is considered appropriate, by the Director, in order to reflect the failure to take the opportunity to put your tax affairs in order during the period of ITIS. The statutory right of appeal to the Guernsey Tax Tribunal against a penalty is not affected, however.

When calculating a penalty, the usual starting point of either 150% (negligence/fraud) or 300% (serious fraud) of the additional tax (in the case of negligence) or the total tax for the year of charge in question, with no reduction being made in respect of any of the allowances to individuals (in the case of fraud), will still be used and the discounts for disclosure, co-operation and size and gravity applied. However, the minimum penalty imposed would not, unless there were exceptional circumstances (see 8 below), fall below 100% of the additional or total tax.

8. **How does this all work in practice?**

For omissions not including any years prior to the Year of Charge 2011

If we considered that the discounts in a particular case were:

Disclosure	15%
Co-operation	30%
Size and gravity	20%

the total reduction would be 65%, making the expected penalty 35% (that is, 100% - 65%).



A sample penalty calculation for *negligence* would then be:

Tax on errors and omissions (say)	£10,000
Starting point for the penalty therefore (150% of the tax)	£15,000
Penalty imposed at 35% therefore	£ 5,250

For omissions relating to years of charge prior to the calendar year 2011

### **Example 1**

If we considered that the discounts in a particular case were:

Disclosure	15%
Co-operation	30%
Size and gravity	20%

the total reduction would be 65%, making the expected penalty 35% (that is, 100% - 65%).

A sample penalty calculation for *negligence* would then be:

Tax on errors and omissions (say)	£10,000
Starting point for the penalty therefore (150% of the tax)	£15,000
Penalty at 35% therefore	<del>£ 5,250</del>
Penalty actually imposed (increased to 100% of the tax on errors and omissions)	£10,000

### **Important**

If following the abatements to the penalty (on considering the discounts in a particular case), the resulting penalty exceeds 100% of the tax on the errors and omissions, the penalty would continue to be imposed based on the penalty calculation.

For omissions including any years of charge prior to the calendar year 2011

### **Example 2**

If we considered that the discounts in a particular case were:

Disclosure	5%
Co-operation	10%
Size and gravity	10%

the total reduction would be 25%, making the expected penalty 75% (that is, 100% - 25%).

A sample penalty calculation for *negligence* would then be:

Tax on errors and omissions (say)	£10,000
Starting point for the penalty therefore (150% of the tax)	£15,000
Penalty imposed at 75% therefore	£11,250
Penalty minimum (100% of the tax on errors and omissions) – ignored	<del>£10,000</del>

For omissions including both years prior to and subsequent to the Year of Charge 2011

As explained in section 7, where any enquiries made by the Director establish that a return is incomplete or incorrect for any year prior to the calendar year 2011, penalties will ordinarily carry a minimum penalty of 100%, unless there were exceptional circumstances.

Circumstances where the Director considers that a minimum penalty of 100% would **not** be appropriate are as follows:

- Where the omissions or irregularities prior to the Year of Charge 2011 are a separate source to those for the Year of Charge 2011 or later years (for example, omissions of bank interest relating to the calendar years 2006 to 2010 and the omission of business income relating to the calendar years 2011 to 2015, etc).
- Where the omissions or irregularities prior to the Year of Charge 2011 are considered to be de minimis in comparison to those for the Year of Charge 2011 or later years (for example, omitted income of £100,000 is discovered covering the calendar years 2010 to 2012 but only, say, £1,000 of the income related to the calendar year 2010).

In these circumstances, the Director would only apply the minimum penalty of 100% of the tax to the omissions or irregularities prior to the Year of Charge 2011 and any omissions or irregularities for the Year of Charge 2011 or later years, would not be subject to the minimum penalty.

- For the avoidance of doubt the minimum penalty of 100% of the tax will apply to all years of charge in cases where omissions or irregularities are discovered from a continuing source which commenced prior to the calendar year 2011 and continued after the calendar year 2011 – subject to the de minimis test (for example, business income which commenced in the calendar year 2006 and was only discovered during the course of enquiries in the calendar year 2016).

9. **Can I bring someone with me to the hearing?**

Yes. If you have a professional adviser, they would be the natural choice. Alternatively, you may wish to be accompanied by a relative or a friend if you prefer.

10. **If I don't attend the hearing will the penalty be higher?**

No.

11. **Who will be present from the Income Tax Office at the hearing?**

The decision whether to impose a penalty, and if so in what amount, rests with either the Director or the Deputy Director. One of these will be present at the hearing. The officer who carried out the enquiries may also be present in the event that any clarification is required in relation to any information given at the hearing.

12. **What is my right of appeal?**

You have the right of appeal against an Order imposing a penalty in exactly the same way as you have the right of appeal against an assessment.

An appeal has to be sent to the Director, in writing, within thirty days of the date of the penalty Order, stating why you disagree with the amount of the penalty.

If you cannot resolve the matter by agreement with us then it will be listed for a hearing by the Guernsey Tax Tribunal.

Under the Income Tax Law, the Tribunal has the power to confirm the penalty, reduce it (to nil if it considers it appropriate) or to increase the penalty (up to the statutory maximum).

If you are still aggrieved by a determination of the Tribunal then there is a right of appeal to the Royal Court but only on a point of law (not on a point of fact).

13. **What if I cannot pay?**

If you cannot pay any amount due under the Income Tax Law (whether this is tax, a penalty or a late payment surcharge) by the due date, you should discuss the matter, as soon as possible, with the Income Tax Office Collection Section.

Collection Section will consider proposals to make payment by instalments. We would normally expect you to make as large a down payment as possible, however, and to only pay the balance by instalments. If the amounts involved are significant, you may be expected to dispose of some of your assets in order to pay the amount due, before we agree to an instalment payment plan.

You should bear in mind, however, that any amount being paid by instalments will be subject to late payment surcharges (and these will be in addition to any late payment surcharges which have arisen already as a consequence of the errors or omissions).

14. **What if you think I have committed *fraud*, not *negligence*?**

As indicated at 7 above, even where *fraud* is suspected, most cases will be resolved as if there had been *negligence*.

It is possible, however, that, at the conclusion of our enquiries and instead of the Director imposing penalties under section 200 of the Income Tax Law, he may ask the Law Officers to consider instituting a prosecution under section 201 of the Income Tax Law (see **Appendix 3**). The Director reserves his right to exercise this option in all cases.

Section 201 sets out the possible penalties, on conviction.

(It should be noted that section 75L(3) of the Income Tax Law, which came into effect on 25 January 2006, introduced further offences in respect of which a person may be prosecuted relating to the submission of an income tax return.)

The legal obligation on a person to make an income tax return is contained in section 68 of the Income Tax Law. Section 75L(3) provides that where, in purported compliance with the duty or requirement imposed by or under section 68, or otherwise for the purposes of section 68, a person:

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence and, on summary conviction, may be liable to imprisonment for a term not exceeding two years, to a fine not exceeding twice level 5 on the uniform scale (currently £20,000), or to both imprisonment and a fine.

**It must be emphasised that these provisions are in addition to the provisions of section 201.**

Where a person commits an offence that could be prosecuted under the provisions of section 75L(3) but the Director nevertheless decides to deal with the matter himself by imposing a penalty (under section 200) this will be dealt with on the same basis as set out in this Statement of Practice.)

If the Director decides there has been **SERIOUS fraud**:

- but nevertheless decides to deal with the matter himself by imposing a penalty (under section 200),

- or requests the Law Officers to consider instituting a prosecution (under section 201) but they decline to do so, for whatever reason, and the Director decides to continue under section 200,

you would be advised prior to the hearing (see **3** above) that the penalty would be based on a starting point of 300% of the tax (rather than 150% - see **7** and **8** above).

Other than that, however, the matter would proceed in the same way as penalties for *negligence*.

The types of cases which the Director may consider as constituting serious *fraud* (and therefore subject to a starting point for the penalty of 300% of the tax) include, but are not limited to, cases where:

- deliberately false statements or accounts have been prepared and submitted to the Director for the purposes of the evasion of tax;
- a complete, and significant, source of income is omitted;
- documents have been forged or falsified/altered and used in the preparation of accounts or income tax returns;
- there has been collusion between two or more persons for the purpose of evading tax;
- a taxpayer who has been the subject of a previous investigation is subsequently discovered to have submitted further returns which are incorrect or incomplete in a material particular;
- a tax or other professional adviser or a taxpayer who has a special status in the administration of justice or income tax acts dishonestly in his own tax affairs;
- the errors or omissions involve the use of companies, bank accounts, etc, situated outside of Guernsey;
- there have been material omissions over a period of six or more years;
- the total tax arising from the errors or omissions exceeds £100,000 in total or £25,000, on average, for each year;
- omissions of income occur which equate to 50% or more of the person's total income;
- there has been organised or systematic *fraud*, or *fraud* of novelty or ingenuity.

15. **Just because there has been an error or omission in one of my returns, does that mean I will be charged a penalty?**

Not necessarily.

- If the error or omission arises from *negligence* and it is corrected before we make any enquiries about the return, no penalties can be charged (see the proviso to section 191 at **Appendix 1**).
- Under both sections 191 and 192, the error or omission has to be material. Let us say, for example, that you had business income of £10,000 and omitted £100. We may decide to resolve the matter on the basis that you should pay tax and any late payment surcharge only, because the amount omitted was not material.
- In addition, if we are satisfied that an error or omission amounted to an understandable, unconscious, oversight then we may agree to resolve the matter on the basis that you pay the tax involved along with any late payment surcharge. Each case would be considered on its merits.

16. **What about penalties under other sections of the Income Tax Law?**

The Income Tax Law does provide for penalties for other failures, such as:

- failure to give notice of liability to tax;
- penalties in respect of returns other than returns of income;
- penalties for *negligence* or *fraud* in connection with claims;
- penalties for *fraudulent* practices;
- penalties for aiding and abetting;
- penalties for failure to submit returns or other information.

Whilst this Statement of Practice does not apply, directly, to those other penalties, such as those listed at the bullet points above, in general the same procedures would be followed. For those penalties which are calculated by reference to the amount of tax involved (such as penalties for failure to notify chargeability to tax and penalties for *negligence* and *fraud* in connection with claims), the same methodology would be used to calculate the amount of the penalty as apply to penalties for incorrect returns under section 191 and 192 of the Income Tax Law.

Penalties which are not based on the amount of any tax arising (for example, penalties for failure to submit income tax returns – where there is an initial penalty of up to a maximum of £300 and a daily penalty of up to a maximum of £50) would be dealt with in a way broadly in line with the procedures outlined in paragraphs **5** and **6** above.

**R R GRAY**  
**Director of Income Tax**

**November 2011**

## Appendix 1(i)

### Extracts from the Income Tax (Guernsey) Law 1975

#### Applicable to 31 December 2007

191. A person who delivers a return of income which is incorrect or incomplete in any material particular, shall, if he acted negligently, be liable to a penalty not exceeding a sum equal to three times the difference between the amount of tax which would have been chargeable if a correct and complete return had been made and the amount of tax which would be chargeable on the assumption that the return actually made was correct and complete:

Provided that if at any time before the Director institutes enquiries as a result of which it is discovered that an incomplete or incorrect return has been delivered such person delivers a correct and complete return he shall not be liable to any penalty.

#### Applicable from 1 January 2008

191. A person who delivers a return of income which is incorrect or incomplete in any material particular, or who fails to comply with section 68A, shall, if he acted negligently, be liable to a penalty not exceeding a sum equal to three times the difference between the amount of tax which would have been chargeable if a correct and complete return had been made and the amount of tax which would be chargeable on the assumption that the return actually made was correct and complete. The amount of tax referred to in this section shall be (for the purposes of determining the amount of the penalty) calculated at the highest rate of tax set out in the Fifth Schedule, notwithstanding the rate of tax for the class or classes in which the person's income falls:

Provided that if at any time before the Director institutes enquiries as a result of which it is discovered that an incomplete or incorrect return has been delivered such person delivers a correct and complete return he shall not be liable to any penalty.



## Appendix 1(ii)

### **Applicable to 31 December 2007**

192. A person who delivers a return of income which is incorrect or incomplete in any material particular shall, if he acted fraudulently, be liable to a penalty not exceeding a sum equal to three times the total amount of tax which he would be liable to pay for the year of charge to which the return relates, no reduction being made in respect of any of the allowances to individuals.

### **Applicable from 1 January 2008**

192. A person who delivers a return of income which is incorrect or incomplete in any material particular or who fails to comply with section 68A, shall, if he acted fraudulently, be liable to a penalty not exceeding a sum equal to three times the total amount of tax which he would be liable to pay for the year of charge to which the return relates, no reduction being made in respect of any of the allowances to individuals. The amount of tax referred to in this section shall be (for the purposes of determining the amount of the penalty) calculated at the highest rate of tax set out in the Fifth Schedule, notwithstanding the rate of tax for the class or classes in which the person's income falls.

## Appendix 2

### Extract from the Income Tax (Guernsey) Law 1975

200. (1) If the Director is of the opinion that there are prima facie grounds for believing that a person is liable to a pecuniary penalty under any section of this Part of this Law other than section 193A or section 193B or section 198 of this Law not being a surcharge or additional surcharge under section 199 he may send to such person a notice in writing stating the grounds of his belief, and subject to the provisions of this section may, if he finds such person liable, make an order directing him to pay a penalty.
- (2) ..... [*repealed w.e.f. 01/01/06*]
- (3) If the Department or the Guernsey Tax Tribunal is satisfied that a person is liable to a penalty under section one hundred and ninety-eight of this Law, it shall, before directing such person to pay a penalty, inform him that he may request that proceedings against him shall be taken before the Royal Court sitting as an Ordinary Court. If such person so requests, the Department or the Guernsey Tax Tribunal shall take no further action in the matter but may, within three months of the date of such request, cause penalty proceedings to be instituted before that Court.
- (4) In no case shall the Department or the Guernsey Tax Tribunal or the Director order the payment of a penalty other than a penalty under section 193A or section 193B of this Law and other than a surcharge or additional surcharge under section 199 unless the person liable has had a reasonable opportunity of stating his case.
- (5) If the Director is satisfied that a person is liable to a penalty under section 193A or section 193B of this Law he may make an order directing that person to pay a penalty, and in such a case –
- (a) no such notice as is referred to in subsection (1) of this section need be sent;
- (b) ..... [*repealed w.e.f. 01/01/06*]
- (c) subsection (4) of this section does not apply.
- (6) An order imposing a penalty under section 190, 193(1), 193A(1) or 193A(2) or 193B(1) or 193B(2) may impose both the original penalty and the additional daily penalties provided for in those sections, and any additional daily penalties so imposed shall accrue after the date of the imposition of the original penalty without further notice; and accordingly, and for the avoidance of doubt, no separate notice or order is required to be served by the Director in respect of the additional daily penalties.

## **Appendix 3(i)**

### **Extract from the Income Tax (Guernsey) Law 1975**

#### **Applicable to 3 April 2011**

201. Notwithstanding any of the provisions of this Law, any person who knowingly makes a false statement or representation in any return or fraudulently does any other act for the purpose of obtaining a relief or exemption from tax or a repayment of tax under this Law or a supplement or additional supplement under section 199A either on his own behalf or on that of any other person, may, in lieu of having proceedings taken against him by the Director under the last preceding section, be prosecuted before the Royal Court, whereupon he shall on conviction be liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding the maximum penalty which the Director could have imposed had the case been dealt with by him, or to both such imprisonment and such fine.

#### **Applicable from 4 April 2011**

201. (1) Notwithstanding any provision of this Law, a person who contravenes subsection (4) or (5) is guilty of an offence and may be prosecuted.
- (2) A prosecution for an offence under subsection (1) is instead of any proceedings that might be taken by the Director against the person concerned under section 200 in relation to that contravention.
- (3) A person prosecuted for an offence under subsection (1) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding –
- (i) twice the maximum penalty which the Director could have imposed had the case been dealt with by him, or
- (ii) in a case where the Director could not have dealt with the matter by way of penalty, twice level 5 on the uniform scale,
- or to both such imprisonment and fine,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine –
- (i) not exceeding four times the maximum penalty which the Director could have imposed had the case been dealt with by him, or

## Appendix 3(ii)

- (ii) a case where the Director could not have dealt with the matter by way of penalty, of four times level 5 on the uniform scale, or to both such imprisonment and fine.
- (4) A person shall not –
- (a) in any return, form, schedule, notification or other document which he, or any person on whose behalf he is acting, is required or authorised to provide by or under this Law or any Ordinance or regulation under it,
  - (b) for the purpose of obtaining –
    - (i) any relief or exemption from, or any repayment of, or any reduction in liability to, tax, penalties, surcharges or additional surcharges under this Law, or
    - (ii) any supplement or additional supplement under section 199A, either on his own behalf or on that of any other person,
  - (c) in purported compliance with any requirement imposed by or under, or otherwise for the purposes of, this Law or any Ordinance or regulation under it,
  - (d) in proceedings before the Department or the Guernsey Tax Tribunal, or
  - (e) otherwise than as mentioned in paragraphs (a) to (d) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document made, produced or furnished by him would or might be used by the Director, the Department or the Guernsey Tax Tribunal for the purpose of exercising their respective functions, do any of the following –
    - (i) make a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
    - (ii) dishonestly or otherwise, recklessly make a statement which is false, deceptive or misleading in a material particular,
    - (iii) produce or furnish or cause or permit to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

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- (iv) dishonestly or otherwise, recklessly produce or furnish or recklessly cause or permit to be produced or furnished any information or document which is false, deceptive or misleading in a material particular, or
  - (v) fraudulently do, or omit to do, any other act whatsoever.
- (5) A person shall not, without reasonable excuse –
- (a) fail to give notice to the Director that he is chargeable to tax within such time, in such form and manner, and containing such information and particulars, as may be required by or under the provisions of this Law or any Ordinance or regulation under it, or
  - (b) fail to provide a return of income or any other return, form, schedule, notification or other document which he is required to provide by or under those provisions within such time, in such form and manner, and containing such information and particulars, as may be required by or under those provisions.
- (6) In this section “statement” includes a written or oral statement or representation.